

EXHIBIT 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE: COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

**DECLARATION OF SCOTT HAYS (CONFERENCE
USA) IN SUPPORT OF JOINT ADMINISTRATIVE
OMNIBUS MOTION TO SEAL (ECF No. 318)**

Trial Date: January 27, 2025
Judge: Hon. Claudia Wilken

I, Scott Hays, declare as follows:

1. I am employed by Conference USA as its Chief of Staff/General Counsel. Except as otherwise noted, I have personal knowledge of the facts set forth below and, if called as a witness, could and would testify competently about them.

2. I am informed that the parties in this matter are seeking to file under seal certain documents that contain highly confidential commercial information of Conference USA and its member schools, in connection with briefs and supporting documentation in support of and opposing class certification. I make this declaration in support of the sealing of that confidential information, pursuant to Local Rule 79-5(c)(1) and (f)(3) of the U.S. District Court for the Northern District of California.

3. The highly confidential commercial information of Conference USA that the parties seek to file under seal is identified in the following chart.

| No. | Citation | Page # | Level of Confidentiality |
|-----|---|--------------|--------------------------|
| 1 | Expert Report of Daniel Rascher [ECF No. 209-2] | p. 88, ¶ 175 | Counsel Only |
| 2 | Expert Report of Daniel Rascher [ECF No. 209-2] | p. 88 n. 203 | Counsel Only |

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| 3 | Expert Report of Daniel Rascher [ECF No. 209-2] | p. 89 n. 203 | Counsel Only |
| 4 | Expert Report of Edwin Desser [ECF No. 209-3] | p. 62 Sec. 17.4 | Network Strictly Confidential |
| 5 | Expert Report of Edwin Desser [ECF No. 209-3] | p. 62 n. 78 | Network Strictly Confidential |
| 6 | Kilaru Decl. Ex. 1, Expert Report of Catherine Tucker [ECF No. 251-1] | p. 219, ¶ 257 (c) | Counsel Only |
| 7 | Kilaru Decl. Ex. 1, Expert Report of Catherine Tucker [ECF No. 251-1] | p. 219, ¶ 257 (c) | Counsel Only |
| 8 | Kilaru Decl. Ex. 1, Expert Report of Catherine Tucker [ECF No. 251-1] | p. 219, ¶ 257 (c) | Counsel Only |
| 9 | Kilaru Decl. Ex. 1, Expert Report of Catherine Tucker [ECF No. 251-1] | p. 219, n.578 | Counsel Only |
| 10 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 52 | Network Strictly Confidential |
| 11 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 52 | Network Strictly Confidential |
| 12 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 52, n.161 | Network Strictly Confidential |
| 13 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 52, n.162 | Network Strictly Confidential |
| 14 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 52, n.163 | Network Strictly Confidential |
| 15 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 53 | Network Strictly Confidential |
| 16 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 53 | Network Strictly Confidential |
| 17 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 53 | Network Strictly Confidential |
| 18 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 53 | Network Strictly Confidential |
| 19 | Kilaru Decl. Ex. 2, Expert Report of Bob Thompson [ECF No. 251-2] | p. 53, n.165 | Network Strictly Confidential |
| 20 | Kilaru Decl. Ex. 6, Desser Deposition Excerpts [ECF No. 251-6] | p. 110:1-15 | Network Strictly Confidential |
| 21 | Kilaru Decl. Ex. 6, Desser Deposition Excerpts [ECF No. 251-6] | p. 112:8-113:4 | Network Strictly Confidential |
| 22 | Kilaru Decl. Ex. 7, Rascher Deposition | p. 133:8-10 | Network Strictly Confidential |

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|----|---|-------------------|----------------------------------|
| | Transcript Excerpts [ECF No. 251-7] | | Confidential |
| 23 | Kilaru Decl. Ex. 7, Rascher Deposition Transcript Excerpts [ECF No. 251-7] | p. 134:12-19 | Network Strictly Confidential |
| 24 | Kilaru Decl. Ex. 7, Rascher Deposition Transcript Excerpts [ECF No. 251-7] | p. 139:17-140:8 | Network Strictly Confidential |
| 25 | Kilaru Decl. Ex. 7, Rascher Deposition Transcript Excerpts [ECF No. 251-7] | p. 146:13-25 | Network Strictly Confidential |
| 26 | Declaration of Steve Berman IFSO Motion for Class Certification [ECF No. 289-1] | Ex. 69 | Network Strictly Confidential |
| 27 | Reply Report of Desser [ECF No. 289-2] | p. 21, ¶ 4.3.4 | Network Strictly Confidential |
| 28 | Reply Report of Desser [ECF No. 289-2] | p. 22, ¶ 4.3.4 | Network Strictly Confidential |
| 29 | Reply Report of Desser [ECF No. 289-2] | p. 23, ¶ 4.3.6 | Network Strictly Confidential |
| 30 | Plaintiffs' Opp. to Defendants' Motion to Exclude the Opinions, Reports, and Testimony of Desser and Rascher [ECF No. 291] | 14:17-19 | Network Strictly Confidential |

4. In particular, the citations identified in rows 1-5 and 10-30 are to information contained in Conference USA's confidential media rights agreements, which includes key facts about Conference USA's and its members' finances, disclosure of which would harm Conference USA's competitive standing.

5. "[C]ourts have found compelling reasons to seal confidential information that could harm a party's competitive standing." *Snapkeys, Ltd. v. Google LLC*, Case No. 19-CV-02658-LHK, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021). The same is true of a nonparty's competitively-sensitive information provided in declarations filed in support of a litigant's motion. *Id.* (sealing various nonparties' information about its business partnerships); *see also In re Electronic Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008).


6. The citations identified in rows 6-9 are to information contained in an NIL endorsement contract entered into by a student-athlete at a Conference USA member institution, including the student-athlete's personally-identifying and private financial information, which is not relevant to the merits of any party's claims or defenses.

7. Personally-identifying information like this constitutes a "compelling reason[]" to seal" *Snapkeys*, 2021 WL 1951250, at *3; *see also Nursing Home Pension Fund v. Oracle Corp.*, No. C01-00988 MJJ, 2007 WL 3232267, at *2 (N.D. Cal. Nov. 1, 2007) ("The Ninth Circuit has found that compelling reasons exist to keep personal information confidential to protect an individual's privacy interest and to prevent exposure to harm or identity theft" and collecting cases).

8. Because of the highly sensitive nature of this information, Conference USA respectfully requests that the information relating to Conference USA's and its member schools' finances, as well as the personally-identifying and private financial information of its member institutions' student-athletes be sealed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28th day of September, 2023 at Dallas, Texas.

DocuSigned by:

 By: _____
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 Scott Hays
 Chief of Staff/General Counsel, Conference USA